LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
MAY 9 1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1062

JAMES CALDWELL,

Petitioner,

versus

CITY OF NEW ORLEANS,

Respondent.

RESPONSE AND MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

JOEL P. LOEFFELHOLZ
ASSISTANT CITY ATTORNEY
715 S. BROAD STREET
ROOM 522
NEW ORLEANS, LOUISIANA 70119

BLAKE G. ARATA
CITY ATTORNEY

Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

JURISDICTION 1

QUESTIONS PRESENTED 2

STATEMENT OF THE CASE 2

ARGUMENT AGAINST GRANTING THE WRIT 4

CONCLUSION 16

CERTIFICATE OF SERVICE 16

APPENDIX A 1a

APPENDIX B 3a

APPENDIX C 6a

APPENDIX D 7a

TABLE OF AUTHORITIES

Cases:

Baldwin v. New York, 399 U.S. 66 (1972) 8

Bloom v. Illinois, 391 U.S. 194 (1968) 8

Coolidge v. New Hampshire, 403 U.S. 443 (1971) 11

Cooper v. State of California, 386 U.S. 58 (1967) 11

District of Columbia v. Clawans, 300 U.S. 617 (1937) 8

Duncan v. Louisiana, 391 U.S. 145 (1968) 5,8

Frank v. U.S., 395 U.S. 1470 (1970) 8

Huffman v. U.S., 470 F.2d 386 (C.A. D.C. 1971) 12

James v. U.S., 416 F.2d 467 (1969) 14

Johnson v. Turner, 429 F.2d 1152 8

TABLE OF AUTHORITIES (Continued)

Page

Maita v. Whitmore, 365 F.Supp. 1331 9

Miller v. California, 413 U.S. 15 (1973) 6,7,8

Nathanson v. U.S., 290 U.S. 41 (1933) 10

Roaden v. Kentucky, 413 U.S. 496 (1973) 11

State v. Anselmo, 256 So.2d 98 (1971) 13

State v. Eros Cinema, Inc., 264 So.2d 615 (La. 1972) 14

State v. Henry, 198 So.2d 889 (1967) 8

State v. Hightower, 272 So.2d 363 (La. 1973) 13

U.S. v. Bobo, 477 F.2d 974 (1973) 11

U.S. v. Harris, 403 U.S. 573 (1971) 13

U.S. ex rel Gaugler v. Brierley, 477 F.2d 516 (1973) 13

U.S. v. Melancon, 462 F.2d 82 (5th Cir. 1972) .. 12,13

U.S. v. Merick, 459 F.2d 644 8-9

U.S. v. Pierce, 301 F.Supp. 824 (1969) 11

U.S. v. Potvin, 481 F.2d 380 9

U.S. v. Rich, 407 F.2d 934 (5th Cir. 1969) 13

Other Authorities:

828 MCS 42-46 2,4,5,9,15

828 MCS 42-46.1 2,4,10

828 MCS 42-46.2 2,4

828 MCS 42-46.3 2,4,10

828 MCS 1-6 6

Home Rule Charter, Section 9-306 5

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

No. 74-1062

JAMES CALDWELL,
Petitioner,

versus

CITY OF NEW ORLEANS,
Respondent.

RESPONSE AND MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Respondent, the City of New Orleans, files this response and respectfully moves that the petition for writ of certiorari in this matter be denied and dismissed for the following reasons:

JURISDICTION

Respondent would respectfully point out to the Court that the judgment of the Louisiana Supreme Court which is complained of was handed down on January 10, 1975 and not January 23, 1974 as stated in petitioner's application at p. 4.

QUESTIONS PRESENTED*

I.

IS THERE A 6TH AMENDMENT RIGHT TO TRIAL BY JURY IN PROSECUTIONS INSTITUTED UNDER 828 MCS 42-46, 42-46.1, 42-46.2 and 42-46.3 OF THE MUNICIPAL CODE OF THE CITY OF NEW ORLEANS EVEN THOUGH THE MAXIMUM PENALTY POSSIBLE IS A $100.00 FINE AND 90 DAYS IN JAIL OR BOTH?

II.

DOES THE AFFIDAVIT CONTAINED IN THE APPLICATION FOR THE SEARCH WARRANT IN THIS MATTER CONTAIN SUFFICIENT FACTS AND CONTENT TO ESTABLISH PROBABLE CAUSE FOR THE ISSUANCE OF SAID WARRANT?

* Respondent's view of the questions presented differs from petitioner's in that respondent has sought to limit the questions presented to those *actually argued* by petitioner in pages 13-24 of his petition and not to those issues expressed in the form of "Questions Presented" at pages 4 and 5 of his petition but *not* briefed in the body of his argument.

STATEMENT OF THE CASE

The Statement of the Case as put forth by petitioner is essentially correct; however, respondent would make the following corrections and additions:

In paragraph number 2 petitioner states that the Honorable Judge Bossetta "viewed the film, 'Deep Throat', at an *evidentiary hearing* (emphasis added) and determined it to be obscene".

Respondent would respectfully show that while the hearing referred to is evidentiary in nature, it is actually an "adversary" hearing which is routinely moved for and held within 48 hours of seizure of a film by the Police Department of the City of New Orleans to determine the film's obscenity or non-obscenity as the case may be. See: Motion and Order for Adversary Hearing, Appendix A.

In paragraph number 9 petitioner creates the impression that the Louisiana Supreme Court has stayed execution, mandate and enforcement of sentence pending the outcome of the instant proceeding.

This is simply not the case. As can be seen from the order of the Louisiana Supreme Court and the cover letter thereto from the clerk of said court (Appendix B) petitioner was granted the stay only until February 21, 1975 and any further stay would have to emanate from this Honorable Court after that date. That this is the fact is amply attested to by petitioner himself when he filed, along with the instant petition, a companion application for supersedeas and stay which was denied on February 26, 1975 (Appendix C) and which is now moot for petitioner was directed, after February 21, 1975, to appear in Municipal Court to begin serving his sentence on March 14, 1975 but failed to so appear and is now a fugitive having fled the jurisdiction of the Court.

On March 14, 1975 Mr. Dale Wilks appeared in Municipal Court and orally informed the Court that Mr. Caldwell had fled the jurisdiction and then presented a "Motion to Withdraw as Counsel of Record" since neither he nor Mr. Rittenberg knew the whereabouts of Mr. Caldwell at that time.

After some discussion Mr. Wilks informed the Court that both he and Mr. Rittenberg were withdrawing as counsel for Mr. Cadlwell in all matters pertaining to this case, including the petition to this Honorable Court, and would no longer be representing him in *any* matter whatsoever.

As of this date Mr. Wilks and Mr. Rittenberg have not, to our knowledge, withdrawn from the instant matter as was their expressed intention when they presented their above motion to the Honorable Judge Bossetta.

ARGUMENT AGAINST GRANTING THE WRIT

I.

IS THERE A 6TH AMENDMENT RIGHT TO TRIAL BY JURY IN PROSECUTIONS INSTITUTED UNDER 828 MCS 42-46, 42-46.1, 42-46.2 AND 42-46.3 OF THE MUNICIPAL CODE OF THE CITY OF NEW ORLEANS EVEN THOUGH THE MAXIMUM PENALTY POSSIBLE IS A $100.00 FINE AND 90 DAYS IN JAIL?

Before any intelligent discussion can be had on this point it must be pointed out that petitioner's brief is in

error at pages 14 and 15 where he attempts to bring this case within the ruling in *Duncan* v. *Louisiana*, 391 U.S. 145 (1968) requiring jury trials by flatly stating:

> "(P)etitioner . . . was deprived of his liberty for six (6) months . . ."

and

> ". . . . (T)he maximum penalty for violation of Municipal Ordinance No. 828 MCS 42-46 is imprisonment for six (6) months and/or a fine of $100.00."

Petitioner would have this court believe that he can be deprived of his liberty for 6 months by making the statement quoted above.

As pointed out in undersigned counsel's letter of February 26, 1975 to the Honorable Clerk of this Court (Appendix D) the maximum penalty for violation of *any* municipal ordinance of the City of New Orleans is *90 days* not 6 months, and/or a fine of $100.00 which is provided both in the Home Rule Charter of the City of New Orleans and the Municipal Code itself thusly:

Home Rule Charter:

> "Section 9-306. Penalties for Violations. The Council shall by ordinance provide for punishment of wilful violations of any provisions of this Charter and may provide for punishment of violations of ordinances, rules and regulations, but *it shall not provide for*

fines of more than one hundred dollars nor for imprisonment for more than ninety days, or both." (Emphasis Added).

828 MCS 1-6:

"Section 1-6. General penalty; continuing violations.

Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense or whenever in this Code or any such ordinance the doing of any act is declared to be unlawful, when no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished *by a fine not exceeding one hundred dollars or by imprisonment for not more than ninety days or both such fine and imprisonment.*" (Emphasis Added).

Therefore, it becomes patently obvious that under no circumstances could Mr. Caldwell ever be sentenced to 6 months imprisonment for violation of *any* municipal ordinance of the City of New Orleans.

At pages 16 and 17 of his argument petitioner states that he, as well as the entire city of New Orleans, is deprived of his/their right to free expression by the ordinance in question.

As was most ably pointed out in *Miller* v. *California*, 413 U.S. 15 (1973), and the companion cases

thereto, obscenity, as "defined" by *Miller*, does not fall within the ambit of first amendment protections and therefore States and Cities have the right to regulate and/or prohibit such expression should they so desire upon a "local" level without regard to "national standards".

Petitioner attempts to show that there are no procedural safeguards in the Ordinance for determining community standards and that nothing short of trial by jury in each case will provide such safeguards.

It is respectfully submitted that the ordinance itself is the embodiment of the community standards of the City of New Orleans for it was formulated and passed by the City Council as the result of a whole month of public hearings, after *Miller* was handed down, at which all views were expressed by the left, the right and the middle of the road and ultimately an acceptable draft was reached which is the ordinance as it stands today. See also: Opinion of Municipal Court — Appendix B of petition for certiorari at pages 35-42.

Is this not then the "Community Standard" contemplated by *Miller*?

If we accept petitioner's argument that only a "local jury" can determine community standards, what then is the elected City Council for the City of New Orleans if not the representative of the entire community? What function does it then serve if not the elected representative of the entire city? Are we still not a republic or would counsel for petitioner have the City

of New Orleans become a pure and absolute democracy requiring a meeting of a "local jury" before anything may be accomplished?

We do not feel that it was ever the intention of this court to abrogate the powers of duly elected representatives of the people so long as there is no misuse of that power.

Be all that as it may, the fact remains that in the instant matter the maximum sentence Mr. Caldwell could receive was 90 days and/or a fine of $100.00 and even though *Miller* speaks of "jurors", no case, that we are aware of, requires a jury trial in municipal misdemeanor petty offenses and therefore *Duncan*, supra, would be controlling in this situation.

In *Duncan* it was specifically held:

> "Crimes carrying possible penalties up to six (6) months *do not* require a jury trial if they otherwise qualify as petty offenses." (Emphasis added) 391 U.S. at 159

The Louisiana Supreme Court, in a case on all fours with the one at bar, has held that a defendant prosecuted for violating state obscenity statutes, violation of which is a misdemeanor, was *not* entitled to a jury trial. *State* v. *Henry*, 198 So.2d 889 (1967).

Accord: *District of Columbia* v. *Clawans*, 300 U.S. 617 (1937); *Bloom* v. *Illinois*, 391 U.S. 194 (1968); *Frank* v. *U.S.*, 395 U.S. 1470 (1970); *Baldwin* v. *New York*, 399 U.S. 66 (1972); *Johnson* v. *Turner*, 429 F.2d 1152; *U.S.* v.

Merick, 459 F.2d 644; *U.S.* v. *Potvin*, 481 F.2d 380; *Maita* v. *Whitmore*, 365 F.Supp. 1331.

It is respectfully submitted that in view of the above cited and quoted jurisprudence, particularly in view of the fact that defendant is only charged with one count of violation of 828 MCS 42-46 which carries a *maximum* penalty of a fine of One Hundred Dollars ($100.00) and/or *90 days in jail*, which is *definitely* a petty offense, no right to trial by jury exists in this matter.

II.

DOES THE AFFIDAVIT CONTAINED IN THE APPLICATION FOR THE SEARCH WARRANT IN THIS MATTER CONTAIN SUFFICIENT FACTS AND CONTENT TO ESTABLISH PROBABLE CAUSE FOR THE ISSUANCE OF SAID WARRANT?

While petitioner set forth three major allegations in paragraph 2 under the heading "Reasons for Granting The Writ" (P. 18) which he asserts renders the warrant invalid in this case, he only argues and discusses the alleged deficiencies in the affidavit of the officer establishing probable cause for the issuance of the warrant.

The main thrust seems to be that the affidavit, under petitioner's theory, *must* contain the provisions of and track the ordinance word for word or it is constitutionally deficient.

The question now becomes whether or not 42-46 (A) (1) and (3) must be tracked word for word in the affidavit or does the affidavit serve, as it both legally and traditionally has, merely as a fact instrument from which the judge must determine probable cause before issuing the warrant?

Respondent agrees totally with petitioner's interpretation of *Nathanson* v. *U.S.*, 290 U.S. 41 (1933) but respectfully points out that the affidavit in question is not a compendium of mere affirmances of beliefs or suspicions but rather is a detailed factual accounting of what the officer saw on the screen when he initially reviewed the film and took notes and therefore *Nathanson* does not apply. (See Affidavit, Appendix of petitioner's Brief at p. 66-78).

Additionally, the affidavit's function is only to supply factual material which may or may not warrant probable cause for the issuance of the warrant itself. When the adversary hearing was held immediately after the film was seized (see Appendix A) then, upon viewing the entire film, the determinations were made in the manner repeatedly set down by this court as well as numerous Federal District and Circuit Courts of Appeal.

Even though not thoroughly discussed in his argument, petitioner alleges that the warrant was violative of his 4th and 14th amendment rights and that the warrant was general and overbroad.

First of all, only *unreasonable* searches and seizures come within the interdict of the Fourth

Amendment. *Cooper* v. *State of California*, 386 U.S. 58 (1967).Moreover, only searches that are unreasonable under *all the surrounding circumstances* are thus prohibited. *U.S.* v. *Pierce*, 301 F.Supp. 824 (1969). Respondent respectfully shows that, considering all the circumstances under which the search in question was made, said search was not in violation of any Constitutional provisions.

In *Roaden* v. *Kentucky*, 413 U.S. 496 (1973) this Court held:

> "A search reasonable as to one type of material in one setting may be unreasonable in a different setting or with respect to another kind of material."

Accord: Coolidge v. *New Hampshire*, 403 U.S. 443 (1971).

It was also held in *U.S.* v. *Bobo*, 477 F.2d 974 (1973) that:

> "The requirements of the Fourth Amendment with respect to reasonableness of searches are not inflexible or obtusely unyielding to the legitimate needs of law enforcement."

These cases lend credence to respondent's assertion that under the circumstances and considering the type of material seized, the search in question was not unreasonable or in violation of any Constitutional man-

dates. In a case similar to the instant matter it was held:

> "A warrant authorizing the search of a bookstore was not overbroad, on the ground that it gave sole discretion to police to decide what items were to be seized, where the underlying affidavit, which requested the warrant authorizing the search for and seizure of described magazines, was attached to the warrant and the warrant expressly incorporated the affidavit in specifying the items to be seized."
> *Huffman* v. *U.S.*, 470 F.2d 386 (C.A. D.C. 1971)

Petitioner also generally alleges, other than his attack upon the affidavit, that the search warrant in this case was issued without probable cause.

Like other Fourth and Fourteenth Amendment provisions probable cause is not fixed or rigid standard. It is flexible and depends on the circumstances surrounding the case. In *U.S.* v. *Melancon*, 462 F.2d 82 (5th Cir. 1972) it was held:

> "Probable cause for the issuance of a search warrant is deemed to exist where facts and circumstances within the affiant's knowledge, and of which he has reasonable trustworthy information, are sufficient unto themselves to warrant a man of reasonable caution to believe that an offense has been or is being committed . . . *Only the probability, and not a prima facie showing, of criminal activity is*

> *the standard of probable cause for issuance of a search warrant.*" (Emphasis added)

Accord: United States v. *Rich*, 407 F.2d 934 (5th Cir. 1969).

In *State* v. *Hightower*, 272 So.2d 363 (La. 1973):

> "Probable cause for issuance of a search warrant means less than evidence which would justify condemnation."

Accord: United States v. *Harris*, 403 U.S. 573 (1971).

Probable cause must be considered according to ordinary and reasonable standards. The rule of probable cause for issuance of a search warrant is a practical, non technical conception. *State* v. *Anselmo*, 256 So.2d 98 (1971). See *U.S. ex rel Gaugler* v. *Brierley*, 477 F.2d 516 (1973) where it was held:

> "The Fourth Amendment requires only that the judicial officer issuing a search warrant be supplied sufficient information under oath or affirmation which would support an independent judgment that probable cause exists for the warrant's issuance."

Petitioner also argues, again in a general sense, that the warrant in question lacks the required amount of specificity in its description of the items to be seized. However, in *Melancon*, supra, it was held:

> "In judging the sufficiency of a description in a search warrant of premises to be searched, it is enough if the description is such that officers with a search warrant can, with reasonable effort, ascertain and identify the place intended."

Also, *James* v. *U.S.*, 416 F.2d 467 (1969) it was held:

> "When circumstances make an exact description of instrumentalities a virtual impossibility, the searching officer need only describe the generic class of items he is seeking when he obtains the search warrant."

Respondent shows that in this case the materials seized could not and need not have been more specifically described before their seizure. (See affidavit, Appendix of Petitioner's brief, P. 66-78). In a similar case involving allegedly obscene motion pictures, *State* v. *Eros Cinema, Inc.*, 264 So.2d 615 (La. 1972), it was noted that:

> ". . . it was difficult for the magistrate issuing the warrant to personally review a motion picture, as compared with reading a book, in order to determine obscenity before ordering a seizure."

It is respectfully submitted, therefore, that there was more than enough probable cause for issuance of the warrant and it was not general or overbroad.

In conclusion, as to the warrant, petitioner makes a specious argument at best. He cites but four cases none of which apply in this situation.

It is patently obvious that the affidavit and warrant in question meet *all* the "requirements" of 42-46 in every sense. What else can be supplied? Are the words:

> "the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; and
>
> * * *
>
> "the work, taken as a whole, lacks serious literary, artistic, political or scientific value." 828 MCS 42-46 (A) (1) and (3)

"magic" in nature and if not quoted verbatim in the affidavit does this then render the entire case null and void, or does not the facts as set forth in the affidavit supply these meanings with enough reasonableness for the judge to determine probable cause before issuing the warrant?

No decision of this Court, that respondent is aware of, has every held that these exact words must be written down verbatim and incorporated in an application for a search warrant or it is constitutionally deficient. This would, it is respectfully submitted, be an unnecessary and confusing requirement for we would lose track of the main objective and get bogged down in the question of whose formulary is

the best rather than what the objective of and the "law" should be.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for certiorari in this matter be denied and dismissed.

Respectfully submitted,

JOEL P. LOEFFELHOLZ
Assistant City Attorney
715 S. Broad Street
Room 522
New Orleans, Louisiana 70119

BLAKE G. ARATA
City Attorney

CERTIFICATE

I hereby certify that a copy of the above and foregoing Response and Motion to Dismiss Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana has been forwarded to opposing counsel by depositing same in the U.S. Mail, postage prepaid, this 8 day of May, 1975.

JOEL P. LOEFFELHOLZ
Assistant City Attorney

MUNICIPAL COURT
CITY OF NEW ORLEANS

CITY OF NEW ORLEANS

versus

JAMES CALDWELL

FILED:

MOTION AND ORDER FOR
ADVERSARY HEARING

Now, comes The City of New Orleans and respectfully shows that the above named defendant was arrested and charged with violation of 828 MCS 42-46 by displaying and showing and charging admissions to see a movie entitled "Deep Throat" on Friday, May 10, 1974 at or about 4:30 P.M. in the City of New Orleans at 1016 Canal Street, commonly called "Cinema 16 Theatre";

Now, therefore, The City of New Orleans hereby respectfully moves that this Court order that an adversary hearing be held within 48 hours in order to determine if said film is or is not obscene within the meaning of and as delineated by 828 MCS 42-46.

JOEL P. LOEFFELHOLZ
Assistant City Attorney
715 South Broad Street
822-7145

FREEMAN R. MATTHEWS
Assistant City Attorney
715 South Broad Street
822-7145

BLAKE G. ARATA
City Attorney

ORDER

Considering the foregoing motion:

IT IS ORDERED that an adversary hearing in this matter be held on the ____ day of May, 1974 at ____ o'clock in order to determine if the film "Deep Throat" is or is not obscene within the meaning of and as delineated by 828 MCS 42-46.

New Orleans, Louisiana this 13th day of May, 1974.

JUDGE

APPENDIX B

OFFICE OF THE
SUPREME COURT OF LOUISIANA
New Orleans, 70112

January 22, 1975

Dale C. Wilks, Esq.
Rittenberg & Wilks, Esqs.
Attorneys at Law
234 Loyola Avenue, Suite 819
New Orleans, Louisiana 70112

Re: No. 55,666
City of New Orleans v. James Caldwell

Dear Mr. Wilks:

The Court today issued a stay of the judgment in the above entitled matter, this order reading as follows:

> "On consideration of the petition and motion of James Caldwell, defendant-appellant in the above numbered and entitled cause: IT IS ORDERED that the execution and mandate and enforcement of the judgment and decree rendered in the above entitled and numbered cause be, and it is hereby, recalled, stayed, and arrested pending and until the 21st day of February, 1975, in order to permit James Caldwell to seek a writ of certiorari from the Supreme Court of the United States."

You will note that this stay is only to permit you to file your writ with the United States Supreme Court within the time permitted, any further stay thereof will have to be obtained from the United States Supreme Court.

If you have any questions, please ask me.

With kindest regards, I am,

Yours very truly,

/s/ HAROLD A. MOISE, JR.
Clerk

HAMJr:db
ccs: Hon. Blake Arata
Joel P. Loeffelholz, Esq.
Mr. Dan Kelly, Esq., Clerk (Your No. 149,117)
Mr. Edwin A. Lombard, Esq., Clerk (Your No. 244-524)

DOCKET NUMBER: 55,666

SUPREME COURT
STATE OF LOUISIANA

CITY OF NEW ORLEANS

versus

JAMES CALDWELL

ORDER FOR SUPERSEDEAS, STAY OF EXECUTION AND STAY AND RECALL OF MANDATE AND STAY AND ARREST OF JUDGMENT

On Consideration of the petition and motion of James Caldwell, defendant-appellant in the above numbered and entitled cause:

IT IS ORDERED that the execution and mandate and enforcement of the judgment and decree rendered in the above entitled and numbered cause be, and it is hereby, recalled, stayed, and arrested pending and until the 21st day of February, 1975, in order to permit James Caldwell to seek a writ of certiorari from the Supreme Court of the United States.

* * * *

NEW ORLEANS, LOUISIANA, this 22nd day of January, 1975.

JOE W. SANDERS, Chief Justice, Supreme Court of the State of Louisiana.

/s/ JOE W. SANDERS

APPENDIX C

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

February 26, 1975

Dale C. Wilks, Esq.
Rittenberg & Wilks — Suite 819
2-3-4 Loyola Ave.
New Orleans, La. 70112

RE: James Caldwell v. City of New Orleans 74-1062
A-690 (Supreme Ct. of La., #55,666)

Dear Sir:

The Court today entered the following order in the above-entitled case:

The application for stay of execution and enforcement of sentence, presented to Mr. Justice Brennan and by him referred to the Court, is denied. Mr. Justice Douglas and Mr. Justice Marshall took no part in the consideration or decision of this application.

Very truly yours,

Michael Rodak, Jr., Clerk
By

/s/ HELEN TAYLOR
Helen Taylor (Mrs.)
Assistant Clerk

APPENDIX D

CITY OF NEW ORLEANS
Department of Law
February 26, 1975

Mr. Michael Rodak
Clerk
United States Supreme Court
Washington, D.C.

Re: James Caldwell, Petitioner versus The City of New Orleans, Respondent.

Dear Mr. Rodak:

We have been served with copies of Petition for Writ of Certiorari and Application for Supersedeas and Stay in the above captioned matter.

Upon reading the writ, I wish to point out one inaccuracy contained at the bottom of Page 14 and the top of Page 15 where it is stated that the maximum penalty for violation of the ordinance in question is imprisonment for six (6) months and/or a fine of One Hundred ($100.00) Dollars.

I must respectfully point out that the maximum penalty for violation of *any* Municipal Ordinance of the City of New Orleans is limited, by State Constitution and City Charter, to *ninety (90) days* and/or a fine of One Hundred ($100.00) Dollars.

Yours truly,

/s/ JOEL P. LOEFFELHOLZ
Joel P. Loeffelholz
Assistant City Attorney

JPL:slh